

JOHN K. RANDEL)
 Claimant)
 VS.)
 Respondent)
PERRY CONSTRUCTION)
 Respondent)
 AND)
KANSAS WORKERS COMPENSATION FUND)

Docket No. 251,165

¹ K.S.A. 44-534a(a)(2) and K.S.A. 44-551(b)(1).

Leroy Albert Perry, the owner of Perry Construction (respondent), contracted with Arlin and Larid Spoo (Spoos) to construct an addition to an equipment shed which Perry Construction had previously built on the Spoos' farm.

On Saturday, October 23, 1999, Mr. Perry spoke with claimant about the job for the Spoos. Mr. Perry testified that he told claimant that claimant would be working for the Spoos. Claimant stated that he thought he was working his regular job for respondent.

Monday morning, October 25, 1999, Charles Schreiner, another employee of respondent, picked claimant up at claimant's residence and drove him to the Spoos' property. Mr. Schreiner instructed claimant concerning the job tasks he was to perform that day and then left. At lunch time Mr. Schreiner returned and took claimant into town for lunch and then returned him to the Spoos' job site. Later that afternoon Mr. Schreiner returned and switched batteries in the drill claimant was using, taking the used battery or batteries to respondent's shop for recharging. While Mr. Schreiner was gone, claimant continued working and suffered the accidental injury when he fell from a ladder. All of the tools claimant used that day, including the battery powered drill and the ladder were provided by respondent.

Shortly after the accident claimant provided a recorded statement to a Farm Bureau insurance adjuster indicating that at the time of the accident claimant believed he was working for respondent and did not know of any arrangement between Mr. Perry and the Spoos to the contrary.

Claimant contends that he was an employee of respondent, Perry Construction, at the time of his accidental injury. Respondent counters that claimant was either an employee of the Spoos or an independent contractor working for the Spoos at the time of his injury.

The employer's right to direct and control the method and manner of doing the work is the most significant aspect of the employer/employee relationship.² The right of control and supervision over the work and over the worker mean the right to direct the manner in which the work is to be performed and the result which is to be accomplished.³

Respondent argues that claimant was under the direction and control of the Spoos and points to the fact that on the date of accident Larid Spoo came by while claimant was working "to get some stuff to work on this [a broken down] combine",⁴ and while there he

² Wallace v. Secretary of Kansas Department of Human Resources, 236 Kan. 97, 689 P.2d 787 (1984) and Scammahorn v. Gibraltar Savings & Loan Assn., 197 Kan. 410, 416 P.2d 771 (1966).

³ McCubbin v. Walker, 256 Kan. 276, 281-82, 886 P.2d 790 (1994).

⁴ Larid Spoo depo at 11.

gave claimant some instructions as to how claimant should remove the tin. But claimant testified that he was taking instructions from either Mr. Perry or Mr. Schreiner, who was claimant's supervisor when Mr. Perry was not around.

Respondent also argues that there was a contractual relationship between the Spoos and claimant, but claimant says he was unaware of this relationship. Claimant testified he had never discussed such an arrangement with Mr. Perry or the Spoos and that he was under the assumption that he was working for Mr. Perry. Respondent points to certain medical records and bills for claimant's treatment that reflect the responsible party as Arlin Spoo or Farm Bureau Insurance, the Spoos' insurance carrier, as evidence supporting a contractual relationship between the Spoos and claimant. Those same documents show Perry Construction as the claimant's employer.

Respondent also points to the fact that claimant was given a paycheck for \$80 from the Spoos which claimant negotiated. Claimant counters, however, that Mr. Perry presented claimant with this check several days after the accident and instructed claimant to endorse it and return it to him to be applied towards his bar bill at the tavern Mr. Perry owned and his son operated, of which claimant was a regular patron.

The Board finds that there was no mutual understanding or meeting of the minds between claimant and the Spoos so as to form a contractual relationship. The credible evidence is that claimant, at the time of the accident, believed that he was working as an employee of respondent and not as either an employee of the Spoos or as an independent contractor hired by the Spoos.

The evidence is heavily weighted in favor of an employer/employee relationship and that relationship was with respondent. Respondent told claimant when and where to work, provided transportation to work, and provided all of the tools for the job. Respondent, through Mr. Perry and Mr. Schreiner, had the right of control and supervision over the work claimant was performing when he was injured. Furthermore, the work claimant was performing was an integral part of the regular business of the respondent.⁵

Although respondent's brief makes little mention of this issue, presumably its argument is that because the building claimant was working on when he was injured was to be used in an agricultural operation, the work claimant was performing would likewise be an agricultural pursuit. While the record shows that the Spoos were involved in agriculture, there is no such evidence with respect to respondent, Perry Construction. This issue seems to be answered by the Kansas Court of Appeals opinion in Frost v. Builders Service, Inc.⁶ In that case, the Court held that the determination of whether a workers

⁵ See 3 Larson's Workers Compensation Law, § 62.01, p. 62-2 (2000).

⁶ 13 Kan. App. 2d 5, 760 P.2d 43, *rev. denied* 243 Kan. 778 (1988).

compensation claimant was engaged in an agricultural pursuit at the time of the injury requires a two-step analysis. The first question is whether the employer was engaged in an agricultural pursuit. Here the general nature of the respondent's business was construction, not agriculture as that term is commonly understood. Accordingly, the Board finds claimant was not engaged in an agricultural pursuit at the time of his accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict on October 27, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Derek J. Shafer, Topeka, KS
Patrick M. Salsbury, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director